

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Messmer Catholic Schools)	File No. SLD-250411
Milwaukee, Wisconsin)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: July 9, 2002

Released: July 10, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Messmer Catholic Schools (Messmer), Milwaukee, Wisconsin.¹ Messmer seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), rejecting Messmer's appeal on the grounds that it was untimely filed.² For the reasons set forth below, we affirm SLD's rejection and deny Messmer's Request for Review.

2. SLD issued a Funding Commitment Decision Letter on December 14, 2001, denying Messmer's request for discounted services under the schools and libraries universal service support mechanism.³ Specifically, SLD denied Messmer's request for discounts for telecommunications services, Internet Access, and internal connections, Funding Request Numbers (FRNs) 612634, 612662, and 612683.⁴ On March 5, 2002, Messmer filed an appeal of

¹ Letter from Br. Bob Smith, Messmer Catholic Schools, to Federal Communications Commission, filed April 23, 2002 (Request for Review).

² See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Mike Bartels, Messmer Catholic Schools, dated December 14, 2001 (Funding Commitment Decision Letter).

⁴ *Id.*

SLD's decision.⁵ On March 8, 2002, SLD issued an Administrator's Decision on Appeal indicating that it would not consider Messmer's appeal because it was received more than 60 days after the December 14, 2001 Funding Commitment Decision Letter was issued.⁶ Messmer subsequently filed the instant Request for Review with the Commission.

3. In its Request for Review, Messmer restates the substance of its original appeal to SLD.⁷ Specifically, Messmer claims it faxed a copy of a letter dated January 2, 2002, on January 4, 2002, in addition to mailing the same letter to SLD.⁸ This letter appears to be an appeal to SLD concerning its December 14, 2001 Funding Commitment Decision Letter.⁹ Messmer also claims that it called SLD on three separate occasions to check on the status of its appeal with SLD, but only received one response.¹⁰ In addition, Messmer claims that it faxed another copy of the January 2, 2002 appeal letter on March 5, 2002.¹¹ SLD records, however, do not indicate that such an appeal was filed with SLD until March 5, 2002. Nor has Messmer provided any record evidence that such a facsimile was sent and received by SLD, as Messmer alleges. Persuasive evidence that the Commission or SLD received a communication could include a date-stamped postal return receipt.¹² The proffered copy of the January 2, 2002 letter, without more, is insufficient to demonstrate that an appeal was timely filed.

4. For requests seeking review of decisions issued on or after August 13, 2001 under section 54.720(b) of the Commission's rules, any such appeal must be filed with the Commission or SLD within 60 days of the issuance of the decision that the party seeks to have reviewed.¹³ Documents are considered to be filed with the Commission only upon receipt.¹⁴ Because the instant Request for Review was not filed within the requisite 60-day period, Messmer's Request for Administrator Review, we affirm the Administrator's Decision on Appeal and deny the instant Request for Review.

⁵ Letter from Br. Bob Smith, Messmer Catholic School, to Schools and Libraries Division, Universal Service Administrative Company, filed March 5, 2002 (Request for Administrator Review).

⁶ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Br. Bob Smith, Messmer Catholic Schools, dated March 8, 2002 (Administrator's Decision on Appeal).

⁷ Request for Review.

⁸ *Id.* See also Request for Administrator's Review.

⁹ Request for Administrator's Review, Attachment.

¹⁰ Request for Review.

¹¹ *Id.* See also Request for Administrator's Review.

¹² See *Request for Review of the Decision of the Universal Service Administrator by Pediatric Library of Rainbow Babies and Children's Hospital, Cleveland, Ohio, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-23380, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 3416 (Com. Car. Bur. 1999).

¹³ 47 C.F.R. § 54.720(b). See *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-376 (rel. Dec. 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel. Dec. 28, 2001 and Jan. 4, 2002).

¹⁴ 47 C.F.R. § 1.7.

5. To the extent that Messmer is requesting that we waive the 60-day deadline established in section 54.720(b) of the Commission's rules for its underlying appeal of SLD's denial of discounted services, FRNs 612634, 612662, and 612683, we deny that request as well.¹⁵ The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.¹⁶ Messmer has not shown good cause for the untimely filing of its initial appeal.

6. We conclude that Messmer has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹⁷ In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of submitting its appeal to SLD within the established deadline if the applicant wishes its appeal to be considered on the merits. The proffered copy of the January 2, 2002 letter, without more, is insufficient to demonstrate that an appeal was timely filed with SLD.

7. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of adhering strictly to its filing deadlines.¹⁸ In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its appeal to SLD if it wishes its appeal to be considered on the merits. We therefore find no basis for waiving the appeal filing deadline.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Messmer Catholic Schools, Milwaukee, Wisconsin, on April 23, 2002, and the request to waive the 60-day time limit in which to file an appeal ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division

¹⁵ See 47 C.F.R. § 54.720(b).

¹⁶ See 47 C.F.R. § 1.3.

¹⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁸ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. rel. Nov. 24, 2000), para. 8 (“In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility for understanding all relevant program rules and procedures.”).

Wireline Competition Bureau